



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

instant case, under the strict doctrine of incorporation requiring the reference to be to an existing document as being in existence. *Allen v. Maddock*, 11 Moo. P. C. 427; *Magnus v. Magnus*, 80 N. J. Eq. 346, 84 Atl. 705; *Hunt v. Evans*, 134 Ill. 496, 25 N. E. 579.

BOOK REVIEWS

STUDIES IN THE PROBLEM OF SOVEREIGNTY. By Harold J. Laski. New Haven: Yale University Press. London: Humphrey Milford. Oxford University Press. 1917. pp. (10)+ 297.

The nature of the state and its attributes have been subjects of fascinating interest at least since the time when Aristotle developed in bold outline that science of politics which perhaps it is not too much to say has dominated the thinking of men to this day. A conception of sovereignty appears clearly enough in Aristotle's discussion of the state; but the term itself seems to have been first used by Bodin in his treatise, *De la Republique* (1576). To Blackstone sovereignty was "the supreme authority in which the *jura summi imperii* reside," a definition which has been quoted approvingly by more than one American supreme court. To most of the better known writers it is absolute, supreme, indivisible. This is the quality which prevailing political theory has attributed to the state, a quality, moreover, which even some modern states have not been slow to assert, and not altogether unsuccessfully to employ.

To this claim, this attempted exertion of unlimited authority, Mr. Laski and certain other modern political writers oppose a bold challenge and denial. What, they ask, are the facts? Has the state succeeded *always* in exerting absolute power when it has sought to do so? For a single failure would seem to be fatal to this claim of absolutism.

Very little real thinking about the nature of the state has been done in America. Despite our democratic institutions and ideas, and ignoring our division of the powers of "indivisible" sovereignty and all the numerous "checks and balances" upon governmental functioning which have given a new meaning to constitutional law, we have tended rather docilely to accept, perhaps, through the medium of Blackstone's wholly mechanistic and fictional treatment, a theory of the absolute state, totally at variance with the spirit of our history or with any actuality which we propose to submit to. Doubtless, too, Rousseau's *Contrat Social* did much to shape and color the views of our early publicists in this as in all their political thinking. The more carefully formulated Austinian theories and the profound and compelling philosophy of Hegel have of course been principal factors in holding our adherence to what may be called the orthodox abstraction of sovereignty.

It cannot be denied that the mind finds a degree of satisfaction in the symmetry, the completeness of this theory, and of the orderliness, the strength, and safety which it may seem to assure. But is the theory realized anywhere in the life of states? Can it be? Those who ask this question, and who scrutinize history to find the answer, are sometimes stupidly lumped in one common lot by debonair critics, and their studies lightly dismissed because of a supposed failure to distinguish between the state and sovereignty and government. Nevertheless the realists are having their influence, and absolute and indivisible sovereignty is being questioned and dissected by a school or schools of growing strength and influence. The state theories of the leading modern thinkers, German and French, are admirably, though possibly not wholly judicially summarized and criticized by M. Léon Duguit in 31 HARVARD LAW REVIEW, pages 1 to 185. In England, Maitland has brilliantly uttered an arresting word in

the introduction to his translation of Gierke's *Genossenschaftsrecht*, and others, notably Dr. Figgis, have published inquiries as to what the history of certain institutions has revealed regarding the real nature of the state.

Into this discussion Mr. Laski has entered with his "Studies in the Problem of Sovereignty," and in the restricted field which he has selected for this first book his work is distinctly illuminating. He is frankly a realist, and though assuredly he recognizes that sovereignty is an abstraction, a quality attributed to the state, and that the state functions only through government, he nevertheless convincingly asserts that we cannot understand the state or its qualities without studying its functional expression. Quite apart from the details of his discussion and the conclusions reached, Mr. Laski has rendered a distinct service to the study of political science in America, Englishman though he be, by publishing here and in part at least stimulated by his observation of American institutions and his contacts with American scholars, studies based upon the functioning of the state rather than upon *a priori* metaphysical assumptions or mere descriptions of its mechanism. This newer viewpoint and method of approach has characterized most of the recent fruitful study of the natural sciences, of jurisprudence and to some extent of economics. We have had masses of merely descriptive essays in "government" and political science, much of it useful, even necessary; but after all that is the method of externalism, and alone it can never lay bare the heart of a living subject. By this it is not meant to suggest that the analytical method does not find its useful place. An admirable example may be seen in a paper, "The Juristic Conception of the State" by Dr. W. W. Willoughby, 12 Amer. Polit. Sci. Rev. 209.

In his interesting first chapter, Mr. Laski states his problem, attacks the monistic theory of the state, and in the undoubted and often unyielding allegiance to church, trade-union, party, and club finds the justification and the necessity for a pluralistic conception. "The will of the State," he says, "obtains preëminence over the wills of other groups exactly to the point where it is interpreted with sufficient wisdom, to obtain general acceptance, and no further. It is a will to some extent competing with other wills, and, Darwin-wise, surviving only by its ability to cope with its environment. . . . But, it may be objected in such a view sovereignty means no more than the ability to secure assent. I can only reply to the objection by admitting it," (page 14).

The greater part of the book is devoted to an historical examination of certain controversies between state and church which afford rich material for the testing of the Hegelian theory of the state. The first of these studies, entitled the "Political Theory of the Disruption," is a running account of and commentary upon the stubborn and successful struggle of Dr. Chalmers and his dissenting followers against the Established Church in Scotland with its state-controlled patronage, a struggle which ended in the disruption of that church, a result hardly to be reconciled with a unitary theory of the state.

Then follow two extended studies of the Oxford Movement and the Catholic Revival in England. With no pretense of developing new sources, the author has sketched these deeply significant movements with great brilliancy, maintaining an attitude at once sympathetic and objective with rare judicial skill. The issue of those struggles is well known and certainly lends no support to the assumption of an absolute and supreme state in England. If, as Mr. Laski suggests, "it seems a little grimly ironical to connect the name of Bismarck with the spirit of religion" (page 239), it seems not less so to yoke De Maistre the arch apostle of ultramontaniam with Bismarck, the man of "blood and iron," and yet that is what has been done in the final chapter, with interesting results and suggestion. Of De Maistre, whose theory is summarized with skill, Mr. Laski says: "He is the real author of that Ultramontaniam by which the nineteenth century Papacy sought the restoration of its prestige." But

fundamentally, as Mr. Laski demonstrates, the theory developed by De Maistre, is no other than that with which Bismarck undertook the complete subordination of the church to the state, "Where De Maistre speaks of the Church, Bismarck speaks of the State: where De Maistre discusses the Papacy, Bismarck is discussing the German Empire. Otherwise, at bottom, the thought is essentially the same" (page 263). "Each saw in a world of individualization the guarantee of disruption and evolved a theory to secure its suppression. Each loved passionately the ideal of unity since that seemed to them both the surest guarantee of survival. Each saw truth as one and therefore doubted the rightness of a sovereignty that was either fallible or divisible; and each in the end came to the realization that his theories were inconsistent with the facts of life" (page 264).

Two brief appendices, entitled respectively "Sovereignty and Federalism" and "Sovereignty and Centralization," bring some phases of American experience to bear upon the problem.

Most of us who must confess to origin in the now much despised Victorian period, are probably not prepared to have the state reduced to the level of a public-service company, and indeed that is not what Mr. Laski urges; but it is high time that we address ourselves seriously to the task of evolving a theory of our American state which accords with the facts; and an Austinian theory is no longer wholly satisfying. If, as Mr. Laski admits in any such voluntarism as he speaks for, "room is left for a hint of anarchy" (page 24), the danger of the opposed theory is at least equally great. To quote the author again, "The thing of which I feel afraid, if the State be admitted limitless power, Professor Dewey has expressed felicitously in a single phrase, 'It has been instructed [he is speaking of the German State] by a long line of philosophers that it is the business of ideal right to gather might to itself in order that it may cease to be merely ideal.' Nor is what he urges true of Germany alone" (page 20).

But what we most need to do is to discover the facts and from them the truth. The state will never be absolutely secure and no unsupported theory is likely long to seriously increase or diminish the germs of conflict and danger which lie in any human society. But a theory slowly corrected by the facts, and by them brought into harmony with actuality, must aid greatly in the amelioration of the strife which the human race seems unable to avoid.

Many will doubtless disagree with Mr. Laski's conclusions; some will consider them "dangerous," but his book is an admirable essay, sound in method, vivid and scholarly, and pointing in the direction in which it is to be hoped he and others will go farther.

HENRY M. BATES.

AN OUTLINE SKETCH OF ENGLISH CONSTITUTIONAL HISTORY. By George Burton Adams. Yale University Press. 1918.

The publication of this little book recalls the fact that it is now almost half a century since the appearance of another book similar in scope and purpose and upon the same subject, the work of an unacknowledged master in the field whose importance is by no means commensurate with its small size. A comparison of Professor Adams' "Sketch" with Freeman's "Growth of the English Constitution" brings out contrasts more significant than mere differences of intellectual scholars. It is the twentieth-century view of the English constitution that stands out, sometimes in almost startling contrast over against that of the nineteenth. For Freeman gave eloquent voice to the conception of the origins of our institutions considered orthodox in his day, and one, it is not much to say, which still prevails amongst the older generation of lawyers and has not yet disappeared entirely from the textbooks.